

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)
Petition of NeuStar, Inc., as the North American)
Numbering Plan Administrator and on behalf of) D.T.E. 00-64
the Massachusetts telecommunications industry,)
for area code relief for the 413 area code in)
Western Massachusetts)

_____)

October 31, 2000

HEARING OFFICER RULING ON PETITIONS TO INTERVENE AND MOTIONS FOR LEAVE TO APPEAR PRO HAC VICE

I. PETITIONS TO INTERVENE

A. Background

On September 7, 2000, the Department issued a notice of public hearings in this docket which set a October 17, 2000 deadline for the filing of petitions to intervene. Timely petitions to intervene were filed by the following: Global NAPs, Inc. ("GNAPs"), AT&T Communications of New England, Inc. ("AT&T"), Verizon Massachusetts ("VZ-MA"), Verizon Wireless ("VZ-W"), RCN-BecoCom, L.L.C. ("RCN"), Allegiance Telecom of Massachusetts, Inc. ("Allegiance"), CTC Communications, Inc. ("CTC"), Eagle Communications, Inc. ("Eagle Communications"), Digital Broadband Communications, Inc. ("Digital Broadband"), Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"), and SNET Wireless, Inc. ("SNET-W"). (1) On October 19, 2000, the Department received a late-filed petition to intervene from Sprint Communications Company L.P. ("Sprint"). On October 27, 2000, the Department received a late-filed petition to intervene as a limited participant from Conversent Communications of Massachusetts, Inc. ("Conversent"). On October 30, 2000, the Department received a late-filed petition to intervene by WorldCom, Inc. ("WorldCom").

B. Petitions to Intervene

1. Standard of Review

The Department's regulations require that a petition to intervene describe how the petitioner is substantially and specifically affected by a proceeding. 220 C.M.R. § 1.03(1)(b); see also G.L. c. 30A, § 10. In interpreting this standard, the Department has broad discretion in determining whether to allow participation, and the extent of participation, in Department proceedings. *Attorney General v. Department of Public Utilities*, 390 Mass. 208, 216 (1983); *Boston Edison Company v. Department of Public Utilities*, 375 Mass. 1, 45 (1978) (with regard to intervenors, the Department has broad, but not unlimited, discretion), cert. denied, 439 U.S. 921 (1978); see also *Robinson v. Department of Public Utilities*, 835 F.2d 19 (1st Cir. 1987). The Department may allow persons not substantially and specifically affected to participate in proceedings for limited purposes. G.L. c. 30A, § 10; 220 C.M.R. § 1.03(1)(e); *Boston Edison*, 375 Mass. at 45. A petitioner must demonstrate a sufficient interest in a proceeding before the Department will exercise its discretion and grant limited participation. *Boston Edison*, 375 Mass. at 45. The Department is not required to allow all petitioners seeking intervenor status to participate in proceedings. *Id.*

In ruling on late-filed petitions to intervene, or to otherwise participate in its proceedings, the Department takes into account a number of requirements and factors in its analysis. First, the Department considers whether a petitioner has demonstrated good cause for late-filing. See 220 C.M.R. § 1.01(4). While "good cause" may not be readily susceptible of precise definition, the proponent of a waiver must make a convincing showing of good cause and may not reserve such a showing for a later appeal of the Hearing Officer's ruling. See *Bay State Gas Company*, D.P.U. 95-52, at 2 Interlocutory Order (July 21, 1995). Administrative efficiency requires that a proponent of a waiver state all available grounds at the time the ruling is requested. If the Department finds there is good cause and that the petitioner is substantially and specifically affected, then the Department balances the extent of participation against the need to conduct a proceeding in a complete, efficient, and orderly fashion. When balancing, the department has considered: (1) the extent of the delay, (2) the effect of late participation on the ongoing proceeding, and (3) the explanation for the tardiness. *Western Massachusetts Electric Company*, D.P.U. 92-8C-A at 5 (1993); *NYNEX*, D.P.U. 94-50, at 3 (1994).

2. Analysis and Findings

The Hearing Officer finds that GNAPs, AT&T, VZ-MA, VZ-W, RCN, Allegiance, CTC, Eagle Communications, Digital Broadband, Sprint PCS, SNET-W, Sprint, Conversent, and WorldCom are substantially and specifically affected by this proceeding for several reasons: (1) the present proceeding concerns area code relief in the 413 area code; (2) the above-named entities are carriers that provide or intend to provide telecommunications service in the Massachusetts western LATA, currently served by

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the single 413 area code; and (3) an area code relief plan for 413 may impact these carriers' provision of service to existing or potential customers. Further, the Hearing Officer finds that good cause exists for granting Sprint's late-filed petition because Sprint's petition was late by only two days and Sprint's participation as a party in this proceeding will not adversely impact any other party or the procedural schedule set by the Department. In addition, the Hearing Officer finds that good cause exists for granting Conversent's late-filed petition to intervene as a limited participant. Conversent's petition was late by only ten days and granting Conversent limited participation will have no adverse impact on the proceeding. Conversent's participation in this proceeding will be limited to submitting comments, attending conferences and hearings, and receiving copies of filings. Lastly, the Hearing Officer finds that WorldCom has not made a sufficient showing in its late-filed petition for participation as a full intervenor in this proceeding. WorldCom has offered no explanation for its delay in filing. However, the Department has broad discretion to allow limited participation status to entities that have a sufficient interest in the proceeding. The Hearing Officer finds that granting WorldCom limited participation status will have no adverse impact on the proceeding. WorldCom's participation will likewise be limited to submitting comments, attending conferences and hearings, and receiving copies of filings.

II. MOTIONS FOR LEAVE TO APPEAR PRO HAC VICE

A. Background

On October 17, 2000, the Department received Motions for Leave to Appear Pro Hac Vice by Richard M. Rindler and Jeanne Stockman to appear on behalf of Allegiance; by Ronald Del Sesto, Jr. to appear on behalf of CTC; by Richard M. Rindler and Ronald W. Del Sesto, Jr. to appear on behalf of Eagle Communications; and by Russell M. Blau and Ronald W. Del Sesto, Jr. to appear on behalf of Digital Broadband.

B. Pro Hac Vice Motions

1. Standard of Review

Where a party to a proceeding before the Department retains counsel not licensed to practice within the Commonwealth of Massachusetts, the Department may require that counsel to file a Motion Pro Hac Vice reciting his or her qualifications to appear before the Department. Typical qualifications considered by the Department are that the counsel is a member in good standing of a state or federal bar and that counsel intends to abide by the Department's rules, procedures, and timetables.

2. Analysis and Findings

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Attorneys Rindler, Stockman, Del Sesto, Jr., and Blau have advised the Department that they are members in good standing of various state bars, actively practice law in the District of Columbia, and have been involved in other proceedings before the Department, other state regulatory agencies, and the FCC. Therefore, Attorneys Rindler, Stockman, Del Sesto, Jr., and Blau have demonstrated sufficient qualifications to appear before the Department in this matter.

III. RULINGS

Accordingly, after due consideration, the Hearing Officer hereby grants the petitions to intervene as parties in this proceeding filed by GNAPs, AT&T, VZ-MA, VZ-W, RCN, Allegiance, CTC, Eagle Communications, Digital Broadband, Sprint PCS, SNET-W, and Sprint. The Hearing Officer also grants leave to Conversent and WorldCom to intervene as limited participants, as discussed above. Further, the Hearing Officer grants the Motions for Leave to Appear Pro Hac Vice filed by Richard M. Rindler, Jeanne Stockman, Ronald W. Del Sesto, Jr., and Russell M. Blau.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date Paul a Foley, Hearing Officer

1. In addition, on October 17, 2000, the Massachusetts Attorney General filed a Notice of Intervention in this proceeding.